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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/088,801	09/18/2002	Finoula Mary Brennan	20020113.ORI	4930
7590 02/22/2007				
C G Merereau Nikolai & Mersereau 820 International Centre 900 Second Avenue South Minneapolis, MN 55402-3813		EXAMINER SKELDING, ZACHARY S		
		ART UNIT	PAPER NUMBER	
		1644		
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE	DELIVERY MODE	
31 DAYS		02/22/2007	PAPER	

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

**Office Action Summary**

Application No.

10/088,801

Applicant(s)

BRENNAN ET AL.

Examiner

Zachary Skelding

Art Unit

1644

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 21 November 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 56-63, 67, 71-116, 118-121 and 124-130 is/are pending in the application.
- 4a) Of the above claim(s) 56-63, 67, 71-114, 119, 124 and 125 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 115, 116, 118, 120, 121 and 126-130 are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

Art Unit: 1644

### DETAILED ACTION

1. The examiner of your application in the PTO has changed. To aid in correlating any papers for this application, all further correspondence regarding this application should be directed to Examiner Zachary Skelding, Group Art Unit 1644.
2. Applicant's amendment filed November 21, 2006, has been considered.
  - Claims 1-55, 64-66, 68-70, 117, 122 and 123 have been canceled.
  - Claims 59, 62-63, 67, 71-78, 84-93, 115-116 and 120-121 have been amended.
  - Claims 126-130 have been added.
  - Claims 56-63, 67, 71-116, 118-121 and 124-130 are pending.
3. *It is noted that claims 56-63, 67, 71-114, 119, 124 and 125 were withdrawn* by the Examiner in the previous Office Action, however, applicant has used claim status identifiers such as "previously presented" and "currently amended" for these previously withdrawn claims. The proper status identifiers for these claims are "withdrawn" or "withdrawn – currently amended." Applicant should be aware that any future amendment to the claims may be returned as non-compliant if the claim status identifiers are grossly improper as in the instant case.
4. *Claims 115, 116, 118, 120, 121 and 126-130 are under consideration* as they read on a method of identifying a compound with efficacy in the treatment of chronic inflammatory disease comprising pre-incubating T<sub>ck</sub> cells or T<sub>ck</sub> and T<sub>icr</sub> cells with a compound to be tested, wherein the compound is being tested for its ability to inhibit the production of TNF $\alpha$ .

The added claims recite methods employing various agent(s) to prepare T<sub>ck</sub> cells. These patentably distinct methods necessitate a supplemental species election as set forth below.

***Supplemental Species Election***

5. This application contains claims directed to patentably distinct species of methods employing various agent(s) to prepare T<sub>ck</sub> cells. Applicant is required to elect one specific **“agent or combination of agents used to prepare T<sub>ck</sub> cells”**, for example, from among the agents recited in claims 129 and 130, such as **“IL-15” OR “IL-6, TNF and IL-2” OR “IL-6, TNF and IL-15”**.

These methods employing “agent or combination of agents used to prepare T<sub>ck</sub> cells” are patentably distinct because they differ with respect to one or more of ingredients which are themselves patentably distinct in that their structures, and/or physiochemical properties are different, and/or they do not share a common structure that is disclosed to be essential for common utility. Further, examination of these species would require different searches in the scientific literature. As such, it would be burdensome to search these species together.

*If applicant believes these species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case.*

Applicant is required under 35 USC 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held allowable.

6. Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, **and a listing of all claims readable thereon**, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which depend from or otherwise require all the limitations of an allowable generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

7. Applicant is advised that the response to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

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8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Zachary Skelding whose telephone number is 571-272-9033. The examiner can normally be reached on Monday - Friday 8:00 a.m. - 5:00 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christina Chan can be reached on 571-272-0841. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Zachary Skelding, Ph.D.  
Patent Examiner  
February 14, 2007

*Phillip Gambel*  
PHILLIP GAMBEL, PH.D. JD  
PRIMARY EXAMINER  
721600  
2/15/07